



John B. Coffman
Acting Public Counsel

State of Missouri

Bob Holden
Governor

Office of the Public Counsel
Governor Office Bldg. Suite 650
P. O. Box 7800
Jefferson City, Missouri 65102

Telephone: 573-751-4857
Facsimile: 573-751-5562
Relay Missouri
1-800-735-2966 TDD
1-800-735-2466 Voice

April 19, 2002

Mr. Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102

Re: **Sprint Missouri, Inc.**
Case No. TT-2002-447

Dear Mr. Roberts:

Enclosed for filing in the above-referenced case, please find the original and 8 copies of the **Office of the Public Counsel's Response to Motion for Reconsideration of the Commission's Order and in Opposition to Expedited Treatment**. I have on this date mailed, faxed, and/or hand-delivered the appropriate number of copies to parties of record. Please "file" stamp the extra-enclosed copy and return it to this office.

Thank you for your attention to this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "M. F. Dandino".

Michael F. Dandino
Senior Public Counsel

MFD:kh

cc: Counsel of Record

Enclosure

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the matter of the tariff filing of Sprint)	
Missouri, Inc. d/b/a Sprint to increase the)	Case No. TT-2002-447
residential and business monthly rate for)	Tariff No. 200200766
the Metropolitan Calling Area (MCA) Plan.)	

**OFFICE OF THE PUBLIC COUNSEL'S RESPONSE TO
MOTION FOR RECONSIDERATION OF THE
COMMISSION'S ORDER AND IN OPPOSITION
TO EXPEDITED TREATMENT**

COMES NOW the Office of the Public Counsel and states as follows in response to Sprint's Motion for Reconsideration of the Commission's Order Suspending Tariff and Scheduling Prehearing Conference. It is also in response to the Motion for Expedited Treatment.

1. Sprint does not have any valid grounds to seek reconsideration of the Commission's suspension order. In fact, Public Counsel suggests that Sprint is prohibited from increasing MCA rates above the present charged rate by *In the Matter of an Investigation for the Purposes of Clarifying and Determining Certain Aspects Surrounding the Provisioning of Metropolitan Calling Area Service after the Passage and Implementation of the Telecommunications Act of 1996*, TO-99-483, September 7, 2000. The Commission found that it would be reasonable, necessary and in the public interest to place a cap on MCA rates "to protect consumers from price increases." It further said: "The rates set in 1992 were found to be just and reasonable and were not based on cost to the carriers; thus those rates are still a just and reasonable cap on the price of MCA service to consumers." (Emphasis added). Therefore, notwithstanding any interpretation of Section 392.245, RSMo. this decision bars Sprint from increasing its MCA rates.

2. Sprint's MCA pricing plan thwarts the language as well as the intent and purpose of Section 392.245, RSMo. 2000 Sprint states that there is a legal distinction between the maximum allowable rate Sprint can charge for MCA and the actual rate it charges for MCA service. Sprint maintains that it was able to increase the maximum allowable price it can charge by tariff without actually changing the actual rates charged to customers. It then "banks" that increase for the future.

3 Sprint maintains that it can increase rates up to that limit without PSC's review because approval is legally mandated. Sprint maintains that in December 2000, it increased its "maximum allowable MCA rates as separate and distinct from its actual rates." On December 11, 2001 Sprint claims it increased the maximum allowable rate again, but again refrained from increasing the actual rates, "banking" a second 8% increase for future use. Now Sprint claims that it can take advantage of this banked 16% increase (8% from 2000 and 8% from 2001) to increase MCA-3, MCA-4 and MCA-5 rates for residence and business customers in Kansas City without regard to the 8% limit.

4. The price cap statute limits price increases to an 8% annual increase with the intent to protect ratepayers from the rate shock of large increases. Sprint has lulled customers into believing that it will forego an annual increase that is available to it, only to have these multiyear, cumulative increases sprung on them two years later. Sprint laid down a smoke screen by not amending its actual rates when it increased the set of hypothetical rates it terms as its maximum allowable rates. Clearly, the General Assembly did not intend the price cap system to be manipulated to permit double digit percentage increases following years where the company willingly waived its right to increase rates. Section 392.245 does not allow Sprint to separately create maximum allowable prices for its nonbasic services separate and distinct from

its actual rate structure so that the Company can elect to make those increased rates effective sometime in the future using compounded annual percentage increases. MCA is a nonbasic service. TO-92-306. For each 12 month period, Section 392.245.11 limits Sprint to the maximum allowable prices for nonbasic services to the current price plus 8%. Section 392.245.11 reads in pertinent part:

The maximum allowable prices for nonbasic telecommunications services of a large, incumbent local exchange telecommunications company regulated under this section shall not be changed until January 1, 1999, or on an exchange-by-exchange basis, until an alternative local exchange telecommunications company is certified and providing basic local telecommunications service in such exchange, whichever is earlier. *Thereafter, the maximum allowable prices for nonbasic telecommunications services of an incumbent local exchange telecommunications company may be annually increased by up to eight percent for each of the following twelve-month periods upon providing notice to the commission and filing tariffs establishing the rates for such services in such exchanges at such maximum allowable prices.* ...An incumbent local exchange telecommunications company may change the rates for its services, consistent with the provisions of section 392.200, but not to exceed the maximum allowable prices, by filing tariffs which shall be approved by the commission within thirty days, provided that any such rate is not in excess of the maximum allowable price established for such service under this section. (Emphasis supplied).

A fair and reasonable reading of this subsection is that each year there may be an increase of not more than 8% which is limited to the following 12 month period. Under Section 392.245.3, "the maximum allowable prices established for a company under subsection 1 of this section shall be those in effect on December thirty-first of the year preceding the year in which the company is first subject to regulation under this section." (Emphasis supplied). Starting with existing rates as of December 31st of the trigger year, the company may thereafter increase those maximum rates by "providing notice to the commission and *filing tariffs establishing the rates for such services in such exchanges at such maximum allowable rates.*" (Emphasis supplied). This means that the maximum allowable rates for nonbasic services can increase only if the company notifies the PSC and files tariffs that become effective at those rates. The statute does

not contemplate some phantom rate that is held in abeyance and then increased in the amount and at the time set by the sole discretion of the company

5. Sprint argues that customers are not harmed since Sprint could have increased the MCA rates 8% each year, but did not do so. It claims that it has two schedules of rates, one as the actual rates charged, the other the schedule of silent rates it could charge, but will not make effective until some future, undesignated time. Now Sprint has decided to dip into its silent schedule of rates to use some of its rate authority it has held in reserve to increase MCA rates in a few outer tiers of the KC metro area MCA. Since the increases fall within the “unused” or banked price increases for those services in those exchanges, Sprint believes that the customer cannot complain when Sprint finally claims the increase it relinquished over the last two years.

6. Extending Sprint’s methodology and reasoning to its logical conclusion, Sprint could increase its maximum allowable MCA rates by 8% per year for each of the first 5 years it is under price caps without increasing the rates charged. After the fifth year, it can increase actual rates by at least 40% over then charged MCA rate and still fall within the price cap maximum allowable price. This approach does violence to the intent and purpose of the regulatory place and is inconsistent with the goal to provide customers with just, reasonable and affordable rates.

7. A more reasoned approach is to allow an increase up to the percentage allowed (8%) and then the new base is established at the resulting rate put into effect and charged to the customers. Sprint’s theory of banking of annual increases is not reasonable and is contrary to the company’s limited ability to increase rates..

8. Sprint had the opportunity to generate additional revenues from increased nonbasic service prices by increasing rates each year. Sprint cannot recoup the opportunities it

relinquished to increase rates in 2000 and 2001. The customers properly reaped the benefit of Sprint's waiver of its opportunities.

9. Sprint tries to stampede the Commission by claiming a constitutional violation in paragraph 11 of its Motion for Reconsideration. It constructs a right to the revenue lost if the Commission delays approving its tariff rates beyond the effective date of May 1, 2002. Sprint argues that the Commission has no discretion to review or suspend Sprint's rates. This theory would mean that the Commission must rubber stamp these rates or violate Sprint's property right to these increased revenues. Sprint's argument is groundless. Price cap regulation does not strip the Commission of its authority to investigate whether or not a proposed charge or activity by a utility is lawful and proper. Sprint is raising this phony constitutional claim of irreversible harm to coerce the Commission to act precipitously and without an adequate record and deliberate consideration of all relevant facts and law.

10. Sprint uses this same argument to petition the Commission for expedited treatment. Public Counsel does not believe that the reasons cited by Sprint give rise to expedited treatment. Sprint proposes simultaneous briefing of this case by April 23 and mandate that the Commission rule on this case seven days later to meet Sprint's own self-imposed deadline. Sprint's accelerated schedule is not reasonable and attempts to avoid a full, fair and reasoned consideration of the factual and legal issues at stake. Sprint controlled the timing of its filing and so it elected to narrow the time window for review.

11. Sprint makes a severely strained construction of Section 392.245.5 to argue that it can create a real rate schedule and phantom rate schedule of maximum allowable rates – set but not in effect. It also makes a strained construction to state that the tariffs shall be approved within 30 days. Sprint fails to give effect to the important qualification of such approval in the

statute: “. . . provided that any such rates is not in excess of the maximum allowable prices established for such services under this section.” These are the factual and legal issues in dispute. The issue of “just and reasonable rates” required under Section 392.200, RSMo. (as well as the same criteria noted in Section 392.245.1) is relevant and material in this case, since rates in excess of the legal limits are neither just, reasonable or lawful.

12. Again Public Counsel suggests that the MCA caps set in *In the Matter of the Establishment of a Plan for Expanded Calling Scopes in Metropolitan and Outstate Exchanges*, TO-92-306 and affirmed in TO-99-483 controls here. Sprint’s proposed tariffs are in excess of these rates fixed by the PSC as the cap for MCA service. For purposes of the MCA, the prices established as the price cap for MCA services in TO-99-483 are Sprint’s maximum allowable prices. The prices proposed by Sprint in its tariff are unlawful, unjust, and unreasonable in direct violation of the PSC’s order and Section 392.245.11, RSMo.

For these reasons, Public Counsel urges the PSC to deny Sprint’s request for reconsideration and for expedited approval of its tariff. Public Counsel suggests that the tariff should be dismissed, or in the alternative, continued under the Commission’s ordered 120 day suspension order to proceed with a full and fair review and consideration of the tariff, including an evidentiary hearing and public hearings.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

BY: 

Michael F. Dandino (24590)
Senior Public Counsel
P.O. Box 7800
Jefferson City, MO 65102
(573) 751-4857
(573) 751-5559
Fax (573) 751-5562
email: mdandino@mail.state.mo.us

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was mailed or hand delivered this 19th day of March, 2002 to the following attorneys of record:

General Counsel
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102

Lisa Creighton Hendricks
Sprint
6450 Sprint Parkway, Bldg. 14
MailStop: KSOPHN0212-2A253
Overland Park, KS 66251

Margaret R. (Peg) Prendergast
Sprint
6450 Sprint Parkway
MailStop: KSOPHN0304-3B160
Overland Park, KS 66241

Richard D. Lawson
Sprint
P. O. Box 689
319 Madison Street
Jefferson City, MO 65102

